

21 C.J.S. Courts § 324

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Courts

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X. Clerks of Courts

A. Nature of Office, Appointment, Qualification, and Tenure

§ 324. Nature of office

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West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  1

A clerk of court is a ministerial officer of the court, and a judge may also serve as clerk of his or her own court.

A clerk of court is a ministerial officer of the court,¹ who has charge of the clerical part of the court's business.² It is the function of a court clerk to keep the court's records and seal, issue process, enter judgments and orders, provide certified copies from the records, and the like.³

A clerk of court is sometimes called a "prothonotary"⁴ and has been described as a public officer clothed with official functions of a highly important nature which require performance at a high level of fidelity.⁵ The clerk belongs to the judicial, as distinguished from the executive or legislative, branch of government.⁶ Accordingly, it has been held that the office of court clerk is a "judicial" office⁷ although there is also authority holding that court clerks are "quasi-judicial"⁸ or "nonjudicial" officers of the judicial branch of government.⁹

Judge or magistrate as clerk.

Under constitutional or statutory provisions, a judge may also serve as clerk of his or her own court.¹⁰ Likewise, a chief magistrate may serve as clerk of the magistrate court.¹¹ However, it has been held that where a board of county commissioners has the authority to provide that the clerk of a particular court is also to serve as clerk of the magistrate court, a part-time magistrate who has been serving as clerk of the magistrate is not entitled to a writ of mandamus restoring him or her to that position.¹²

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Footnotes

- 1 Fla.—*Barrett v. State*, 965 So. 2d 1260 (Fla. 2d DCA 2007).

Ga.—*STL Management Consultants LLC v. Manhattan Leasing Enterprises Ltd.*, 333 Ga. App. 309, 775 S.E.2d 758 (2015).

Mass.—*Skandha v. Clerk of Superior Court for Civil Business In Suffolk County*, 472 Mass. 1017, 37 N.E.3d 1095 (2015); *Gorod v. Tabachnick*, 428 Mass. 1001, 696 N.E.2d 547 (1998).

Ohio—*State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St. 3d 334, 2006-Ohio-1065, 843 N.E.2d 778 (2006).
- 2 Ga.—*STL Management Consultants LLC v. Manhattan Leasing Enterprises Ltd.*, 333 Ga. App. 309, 775 S.E.2d 758 (2015).

Ill.—*People ex rel. Vanderburg v. Brady*, 275 Ill. 261, 114 N.E. 25 (1916).
- 3 Ill.—*People ex rel. Vanderburg v. Brady*, 275 Ill. 261, 114 N.E. 25 (1916).

As to the powers and duties of the clerk, generally, see § 334.

As to record keeping duties, see § 338.
- 4 Pa.—*Brown v. Levy*, 621 Pa. 1, 73 A.3d 514 (2013); *McKeown v. Bailey*, 731 A.2d 628 (Pa. Super. Ct. 1999).
- 5 Mass.—*State Board of Retirement v. Bulger*, 446 Mass. 169, 843 N.E.2d 603 (2006).

Miss.—*In re Dunn*, 84 So. 3d 4 (Miss. 2010).
- 6 Ill.—*Pucinski v. County of Cook*, 192 Ill. 2d 540, 249 Ill. Dec. 835, 737 N.E.2d 225 (2000); *Kane County v. Carlson*, 116 Ill. 2d 186, 107 Ill. Dec. 569, 507 N.E.2d 482 (1987).

Nev.—*State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 32 P.3d 1263 (2001).

Tenn.—*Jordan v. Knox County*, 213 S.W.3d 751, 216 Ed. Law Rep. 982 (Tenn. 2007).
- 7 Nev.—*State ex rel. Harvey v. Second Judicial Dist. Court*, 117 Nev. 754, 32 P.3d 1263 (2001).
- 8 Fla.—*Zoba v. City of Coral Springs*, 2016 WL 889312 (Fla. 4th DCA 2016); *Fong v. Forman*, 105 So. 3d 650 (Fla. 4th DCA 2013).

Court clerks have both discretionary and ministerial functions as an arm of court
Okla.—*Speight v. Presley*, 2008 OK 99, 203 P.3d 173 (Okla. 2008).
- 9 Ill.—*Pucinski v. County of Cook*, 192 Ill. 2d 540, 249 Ill. Dec. 835, 737 N.E.2d 225 (2000); *People v. Jackson*, 2013 IL App (3d) 120205, 377 Ill. Dec. 458, 2 N.E.3d 374 (App. Ct. 3d Dist. 2013), appeal denied, 379 Ill. Dec. 17, 5 N.E.3d 1126 (Ill. 2014).

Pa.—*Com., Dept. of Health v. Hanes*, 78 A.3d 676 (Pa. Commw. Ct. 2013).
- 10 Ala.—*State v. Torbert*, 200 Ala. 663, 77 So. 37 (1917).

N.D.—*State ex rel. Reese v. Mooney*, 64 N.D. 620, 255 N.W. 105 (1934).

11 Ga.—[Randolph County v. Bantz](#), 270 Ga. 66, 508 S.E.2d 169 (1998).

12 Ga.—[Jennings v. McIntosh County Bd. of Com'rs](#), 276 Ga. 842, 583 S.E.2d 839 (2003).

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